



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



June 19, 2003

Rob Munce  
Munce's Superior Inc.  
620 Main Street  
Gorham, NH 03581

Re: Administrative Order by Consent Docket No. AO WMD 03-007

Dear Mr. Munce:

Enclosed for your records is a copy of the Administrative Order by Consent in this matter executed by Philip J. O'Brien, Ph.D., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on June 18, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving these matters. If you have any questions, please contact me at (603) 271-6072, or by e-mail at [msclafani@des.state.nh.us](mailto:msclafani@des.state.nh.us).

Sincerely,

  
Michael Scialfani,  
Legal Assistant

cc: Philip J. O'Brien, Ph.D., Director, Waste Management Division  
Mark R. Harbaugh, DES Legal Unit  
Public Information Officer, DES PIP  
Michael Juranty, WMD UST



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3644 FAX (603) 271-2181



Munce's Superior Inc.  
620 Main Street  
Gorham, NH 03581

Re: DES Site No. 199802096  
Gorham Oil  
443 Main Street  
Gorham, NH 03581

**ADMINISTRATIVE ORDER**

**BY CONSENT**

**No. WMD 03-07**

April 22, 2003

**A. INTRODUCTION**

This Administrative Order by Consent is issued by the Department of Environmental Services, Waste Management Division to, and with the consent of, Munce's Superior Inc., pursuant to RSA 146-A:11-c, RSA 146-A:15, and RSA 146-A:16. This Administrative Order by Consent is effective upon signature by both parties.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. Munce's Superior Inc. is a New Hampshire corporation having a mailing address of 620 Main Street, Gorham, NH 03581.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 146-A authorizes DES to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1402 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:15, the Commissioner of DES has adopted Env-C 615 to establish the schedule of fines for such violations relating to aboveground storage tanks.
3. Munce's Superior Inc. is the owner of one 13-year old 15,000-gallon diesel aboveground petroleum storage tank ("subject AST system") resting on pea stone located at Gorham Oil, 443 Main Street, Gorham, further identified by the DES site number 199802096 ("the Facility").
4. The AST system at the Facility is subject to the requirements of NH Administrative Rules Env-Wm 1402.

5. Env-Wm 1402.29 requires that the owner or operator shall perform an initial detailed interior tank inspection of any tank greater than or equal to 5,100-gallons in size when it is 10-years old (20-years old if entirely on cradles), or by April 25, 2002, whichever is later (by April 25, 2002 if of an unknown age). Such inspection shall be performed by an American Petroleum Institute ("API") certified inspector or by a licensed professional engineer ("P.E.") registered in any state.
6. The subject AST system at the Facility has not had a detailed interior tank inspection performed by an API certified inspector or a licensed P.E. as required by Env-Wm 1402.29.

#### **D. DETERMINATION OF VIOLATIONS**

1. Munce's Superior Inc. has violated Env-Wm 1402.29 by failing to perform a detailed interior inspection on the Facility's subject AST system.

#### **E. ORDER**

Based on the above findings, DES hereby orders Munce's Superior Inc., and Munce's Superior Inc. agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. In calendar year 2003, Munce's Superior Inc. shall have the detailed interior tank inspection performed by an API certified inspector or a licensed P.E. for the subject AST system at the Facility and submit the inspection report to DES within 30 days of the date of the report.
2. Munce's Superior Inc. shall send correspondence, inspection report summaries and results, and interior inspection certifications signed by an API certified inspector or a P.E. to DES as follows:

Michael W. Juranty, P.E.  
DES Waste Management Division  
PO Box 95  
Concord, NH 03302-0095  
Fax No.: (603) 271-2181

#### **F. ADMINISTRATIVE FINES/STIPULATED PENALTIES**

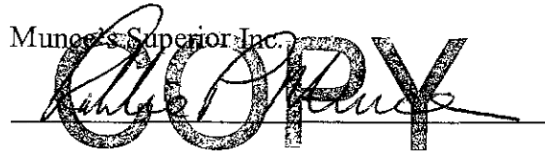
1. Munce's Superior Inc. agrees to pay a stipulated penalty of \$2,000 per calendar month or portion thereof that compliance with each item in Section E. is not achieved within the specified time. If stipulated penalties become due, payment shall be by certified check made payable to "Treasurer, State of New Hampshire" and mailed to DES Legal Unit, Attn: Michael Sciafani, Legal Assistant, PO Box 95, Concord, NH 03302-0095, within 30 days of the date of notice from DES that payment is required.

G. CONSENT AND WAIVER OF APPEAL

**COPY**

1. By execution of this Administrative Order by Consent, Munce's Superior Inc. agrees that this Order shall apply to and be binding upon Munce's Superior Inc., and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, Munce's Superior Inc. waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.
3. By execution of this Administrative Order by Consent, Munce's Superior Inc. waives any right to a hearing on or appeal of the penalties specified in sections E and F provided by statute, rule, or common law, and waives any right to object to the penalties in any collection action initiated by DES due to non-payment of the penalties by Munce's Superior Inc..

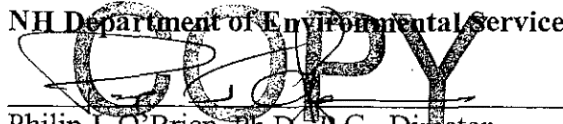
Munce's Superior Inc.

A large, stylized "COPY" watermark is overlaid on the signature.

5/10/03  
Date

By: Rob Munce  
Duly Authorized

NH Department of Environmental Services

A large, stylized "COPY" watermark is overlaid on the signature.

Philip J. O'Brien, Ph.D., D.G., Director  
Waste Management Division

6/12/03  
Date

A large, stylized "COPY" watermark is overlaid on the signature.

Michael V. Nolin, Commissioner

06 18 03  
Date

cc: Gretchen Rule, DES Legal Unit  
Public Information Officer, DES PIP Office